UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

GREENBRIER VMC, LLC D/B/A

Case No. 10-CA-094646

GREENBRIER VALLEY MEDICAL

CENTER

:

and

:

NATIONAL NURSES ORGANIZING

COMMITTEE

NS TO THE DECISION OF

RESPONDENT'S EXCEPTIONS TO THE DECISION OF ADMINISTRATIVE LAW JUDGE ROBERT RINGLER

As the Respondent in the above-captioned case, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center (hereafter, "Greenbrier" or the "Hospital") hereby submits, by and through the Hospital's Undersigned Counsel, these Exceptions to the Decision (hereafter, the "Decision") issued by Administrative Law Judge Robert Ringler (hereafter, the "Judge") in the above-captioned case on January 23, 2014.

STATEMENT OF THE CASE

Exception No. 1: Greenbrier excepts to the Judge's finding that the Complaint alleged that the Hospital violated Section 8(a)(1) and (3) of the National Labor Relations Act by issuing James Blankinship a written warning. See Decision, page 1, lines 1-4.

Grounds: The Judge's finding is not supported by the record.

FINDINGS OF FACT

II. ALLEGED UNFAIR LABOR PRACTICES

C. BLANKINSHIP'S TENURE

Exception No. 2: Greenbrier excepts to the Judge's finding that Blankinship testified that, "before engaging in open Union activity", Blankinship maintained a "good relationship" with Rose. See Decision, page 3, lines 5-6.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

1. ANNUAL PERFORMANCE EVALUATIONS

Exception No. 3: Greenbrier excepts to the Judge's finding that Blankinship received "strong" evaluations. See Decision, page 3, line 11.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 4: Greenbrier excepts to the Judge's finding that in March 2010 Blankinship received a "positive" appraisal, which classified him as "exceeding his position's requirements." See Decision, page 3, lines 15-16.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 5: Greenbrier excepts to the Judge's finding that in April 2011, Blankinship received "another strong appraisal which again graded him as exceeding his position's requirements." See Decision, page 3, lines 20-21.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 6: Greenbrier excepts to the Judge's finding that in April 2012, Blankinship received a "more neutral evaluation, which graded him as essentially meeting his job requirements." See Decision, page 3, lines 29-30.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 7: Greenbrier excepts to the Judge's finding that Rose "failed to substantiate her logic" that Blankinship's performance evaluation score of a 2.8 was below average and that RNs averaged 3.2. See Decision, page 3, FN8.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 8: Greenbrier excepts to the Judge's finding that Blankinship "received strong prior appraisals" and therefore that the Judge could not

credit Rose's claim that Blankinship's performance evaluation score of a 2.8 was below average. See Decision, page 3, FN8.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

2. OCTOBER SCHEDULE CHANGE

Exception No. 9: Greenbrier excepts to the Judge's finding that the Hospital's assigning 12-hour shifts that started at 7:00 am to Blankinship "demonstrated great confidence" in Blankinship. See Decision, page 3, lines 36-37.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 10: Greenbrier excepts to the Judge's finding that Blankinship described the rationale behind his schedule change. See Decision, page 4, line1.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 11: Greenbrier excepts to the Judge's finding that Blankinship testified that Rose changed his schedule as inducement to stay in the ER. See Decision, page 4, lines 19-20.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 12: Greenbrier excepts to the Judge's finding that, because Blankinship testified that Rose changed his schedule as an inducement to stay in the ER, and Rose testified that he was only temporarily replacing an absent colleague, the Judge was required to make a credibility determination. See Decision, page 4, lines 19-21.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence and is legally erroneous.

Exception No. 13: Greenbrier excepts to the Judge's finding that the Hospital's "conspicuous failure" to elicit testimony from Rose about the "important" exchange between Blankinship and Rose about the Outpatient Surgery position that Blankinship had applied for strongly favored Blankinship. See Decision, page 4, lines 23-24.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence and is legally erroneous.

Exception No. 14: Greenbrier excepts to the Judge's finding that Rose's contention that Blankinship was temporarily replacing an absent RN was contradicted by the work schedule. See Decision, page 4, lines24-25, FN9.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

3. NOVEMBER UNION ACTIVITY

Exception No. 15: Greenbrier excepts to the Judge's finding that Blankinship volunteered to serve as a Union representative and assist with bargaining, grievances, and disciplinary meetings. See Decision, page 4, lines 29-30.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 16: Greenbrier excepts to the Judge's finding that on November 29, 2012, Blankinship submitted a signed statement to Rose which "announced his new role" and read "[I will] serve as the Facility Bargaining Council and Nurse Representative of ... [the Union and] ... will be participating in all investigatory meetings for possible discipline of RNs in our unit based on the [ir] Weingarten Rights and also serve as [their] representative ... in grievance [s]". See Decision, pages 4-5, lines 30, 1-6.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 17: Greenbrier excepts to the Judge's finding that Blankinship described "Rose's astonished and hostile reaction" to Blankinship's announcement. See Decision, page 5, line 8.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 18: Greenbrier excepts to the Judge's finding that, because Rose did not testify regarding the exchange that Blankinship testified occurred on November 29, 2012, the Judge must fully credit Blankinship's account. See Decision, page 5, lines 19-20, FN11.

Grounds: The Judge's finding is legally erroneous.

4. DECEMBER 6 DISCIPLINARY ACTION

Exception No. 19: Greenbrier excepts to the Judge's finding that Blankinship's PIP afforded him a 30-day rehabilitation period through January 6, 2013 to demonstrate improvement. See Decision, page 5, lines 36-38.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

5. EVENTS CITED BY PIP

B. NOVEMBER 24 – INTUBATION COMMENT

Exception No. 20: Greenbrier excepts to the Judge's finding that Blankinship stated, "Dr. Johnson was ... [going to] intubate ... and called for the medications to be given. You ... [generally] give a ... sedative first, paralytic second ..." See Decision, page 6, lines 28-31.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 21: Greenbrier excepts to the Judge's finding that Blankinship stated that he previously assisted numerous intubations and "solely blurted out a redundancy." See Decision, page 6, lines 37-38.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 22: Greenbrier excepts to the Judge's finding that Rose "admitted" that Blankinship's comment about intubation was a "first-time occurrence." See Decision, page 6, line 41.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

6. BLANKINSHIP'S REMEDIAL ACTIONS

Exception No. 23: Greenbrier excepts to the Judge's finding that Blankinship reported his progress on the task assigned by the PIP to Rose.

See Decision, page 8, lines 21-22.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

A. BRINGING ORDER SHEETS TO PATIENT ROOMS WHEN ADMINISTERING MEDICATION

Exception No. 24: Greenbrier excepts to the Judge's finding that the Hospital failed to show whether its medication policies were documented, disseminated and universally applied, "as opposed to being uniquely crafted for Blankinship and inconsistent in application." See Decision, page 8, FN12.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

B. INTUBATION DRUG TRAINING AND TESTING

Exception No. 25: Greenbrier excepts to the Judge's finding that Blankinship testified that Rose never offered him formal intubation training and testing, and that Blankinship sought out RN Little, who provided some "informal" instruction. See Decision, page 9, lines 4-5.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

C. CHARTING

Exception No. 26: Greenbrier excepts to the Judge's finding that Blankinship credibly testified that he complied with the directive to improve

his charting, and that Blankinship asserted his charting was consistently relevant and timely. See Decision, page 9, lines 14-15.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 27: Greenbrier excepts to the Judge's finding that RN Christy Pack "appeared to be highly motivated to advance the Hospital's cause." See Decision, page 9, lines 20-21.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 28: Greenbrier excepts to the Judge's finding that Rose "wholly failed" to offer specific examples of Blankinship's deficient charting and "solely spoke in generalities". See Decision, page 9, lines 30-31.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 29: Greenbrier excepts to the Judge's finding that redacted copies of Blankinship's deficient charts would "have presumably been readily available" if "the Hospital's assertions were true." See Decision, page 9, lines 31-32.

Grounds: The Judge's finding is not supported by the record and constitutes unlawful speculation.

Exception No. 30: Greenbrier excepts to the Judge's finding that it was probable that if Blankinship's charting had remained deficient, the Hospital would have elevated his discipline as stated by the PIP. See Decision, page 9, lines 33-35.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and constitutes unlawful speculation.

Exception No. 31: Greenbrier excepts to the Judge's finding that "evidentiary omissions and inconsistencies" undercut Rose's "generalized" testimony about a "highly subjective" topic. See Decision, page 9, lines35-36.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

8. EXTENSION OF THE PIP

Exception No. 32: Greenbrier excepts to the Judge's finding that the PIP stated that Blankinship's performance would be reviewed on January 6, 2013. See Decision, page 9, line 44.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 33: Greenbrier excepts to the Judge's finding that Rose extended the PIP by 90 days because Blankinship was absent during the period of the PIP. See Decision, page 9, line 45.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 34: Greenbrier excepts to the Judge's finding that Blankinship did not receive written notice of the extension of the PIP. See Decision, page 9, line 46.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

9. APRIL 16, 2013 MEETING

Exception No. 35: Greenbrier excepts to the Judge's finding that the Hospital "conspicuously failed" to offer redacted copies of the allegedly deficient charts completed by Blankinship, which would corroborate Rose's claims of ongoing charting issues. See Decision, page 10, lines 37-38.

<u>Grounds</u>: The Judge's finding mischaracterizes the evidence and is legally erroneous.

10. FAILURE TO END THE PIP

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Exception No. 36: Greenbrier excepts to the Judge's finding that Rose was unclear about how she delivered the news of the extension of the PIP to Blankinship. See Decision, page 10, line 44.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 37: Greenbrier excepts to the Judge's finding crediting Blankinship as a "highly credible witness with a stellar demeanor." See Decision, page 11, lines 8-9.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 38: Greenbrier excepts to the Judge's finding that it was probable that if Rose had ended the PIP, she would have done so in writing.

See Decision, page 11, lines 9-10.

Grounds: The Judge's finding is not supported by the record and constitutes unlawful speculation.

III. ANALYSIS

B. PRIMA FACIE CASE

Exception No. 39: Greenbrier excepts to the Judge's finding that the General Counsel made a prima facie Wright Line showing. See Decision, page 12, line 32.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 40: Greenbrier excepts to the Judge's finding that animus was demonstrated by Rose's "hostile" reaction to Blankinship's announcement. See Decision, page 12, line 34.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 41: Greenbrier excepts to the Judge's finding that animus was demonstrated by the "close timing" between Blankinship's announcement and the PIP, warning and schedule change, relying upon La Gloria Oil & Gas. See Decision, page 12, lines 34-35.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

C. AFFIRMATIVE DEFENSE

Exception No. 42: Greenbrier excepts to the Judge's finding that the Hospital failed to show it would have issued Blankinship a PIP and written warning, and changed his work shift, absent his Union activity. See Decision, page 12, lines 40-41.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 43: Greenbrier excepts to the Judge's finding that the Hospital's claim that the PIP was non-disciplinary is flawed, "given that the PIP clearly warns that the ongoing failure to address one's performance issues could result in termination." See Decision, page 12, FN15.

Grounds: The Judge's finding is not supported by the record.

Exception No. 44: Greenbrier excepts to the Judge's finding that the Hospital's assertion that the Complaint did not cover the written warning is unreasonable. See Decision, page 12, FN16.

Grounds: The Judge's finding is not supported by the record.

Exception No. 45: Greenbrier excepts to the Judge's finding that the PIP and the written warning "cannot be logically separated for substantive or remedial purposes." See Decision, pages 12-13, FN16.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 46: Greenbrier excepts to the Judge's finding that General Counsel announced at the onset of the hearing that he was challenging both the PIP and warning, and both matters were exhaustively litigated by all.

See Decision, page 13, FN16.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 47: Greenbrier excepts to the Judge's finding that "an unplead matter could support an unfair labor practice finding, where it is closely connected to the Complaint's subject matter and has been fully litigated, which is the case here." See Decision, page 13, FN16.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

1. PIP AND WARNING

Exception No. 48: Greenbrier excepts to the Judge's finding that the Hospital did not show that it would have issued the PIP and warning, absent Blankinship's Union activity. See Decision, page 13, lines 4-5.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 49: Greenbrier excepts to the Judge's finding that several of the Hospital's proffered reasons were pretextual. See Decision, page 13, line 5.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 50: Greenbrier excepts to the Judge's finding that Blankinship's intubation comments were "innocuous". See Decision, page 13, lines 5-6.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 51: Greenbrier excepts to the Judge's finding that Blankinship's "sole gaffe involved speaking aloud a question with an obvious answer." See Decision, page 13, lines 6-7.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 52: Greenbrier excepts to the Judge's finding that it was unlikely that Blankinship "just simply forgot the seemingly straightforward medication order and required re-education on this topic." See Decision, page 13, FN17.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and constitutes unlawful speculation.

Exception No. 53: Greenbrier excepts to the Judge's finding that Blankinship's cardiac comments were "equally harmless". See Decision, page 13, line 7.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 54: Greenbrier excepts to the Judge's finding that Blankinship "only offered an insignificant opinion while aiding his

colleagues without any patient consequence." See Decision, page 13, lines 7-8.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 55: Greenbrier excepts to the Judge's finding that "The Hospital should welcome such exchanges, as opportunities to promote dialogue that might benefit its staff." See Decision, page 13, FN18.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 56: Greenbrier excepts to the Judge's finding that the Hospital's "decision to seize upon this exchange and transform it into a disciplinary matter is suspect." See Decision, page 13, FN18.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No 57: Greenbrier excepts to the Judge's finding that the Hospital's timing was "questionable", given that discipline "was conspicuously not meted out until a week after Blankinship announced his new Union role." See Decision, page 13, lines 9-10.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 58: Greenbrier excepts to the Judge's finding that "if the Hospital genuinely believed that the intubation comments, cardiac monitor opinion, medication error and near-miss medication error warranted discipline, it would have acted in a contemporaneous manner." See Decision, page 13, lines 11-13.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, is legally erroneous and constitutes unlawful speculation.

Exception No. 59: Greenbrier excepts to the Judge's finding that the Hospital's "decision to initially remain silent about these topics, and then seize upon them as disciplinary fodder only after [Blankinship] engaged in Union activity is highly suspicious." See Decision, page 13, lines 14-16.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 60: Greenbrier excepts to the Judge's finding that Rose's "hostile reaction" to Blankinship's Union activity "demonstrated invidious intent". See Decision, page 13, lines 16-17.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 61: Greenbrier excepts to the Judge's finding that the Hospital's "unlawful motivation" was further demonstrated by several extensions of the PIP issued to Blankinship and the Hospital's "ongoing failure to end it." See Decision, page 13, lines 18-19.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 62: Greenbrier excepts to the Judge's finding that the Hospital's "unlawful motivation" was further demonstrated by "Rose's overall lack of involvement in [Blankinship's] rehabilitation." See Decision, page 13, lines 18-19.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 63: Greenbrier excepts to the Judge's finding that if the PIP was "genuinely" a non-discriminatory tutorial designed to enhance performance, Rose would not have "continuously and arbitrarily" increased the PIP's duration or failed to tell Blankinship the PIP had ended. See Decision, page 13, lines 19-21.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and constitutes unlawful speculation.

Exception No. 64: Greenbrier excepts to the Judge's finding that the Hospital "arbitrarily" increased the PIP from 30 days to 120 days, and then to 150 days. See Decision, page 13, FN19.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 65: Greenbrier excepts to the Judge's finding that Blankinship credibly testified that he was charting accurately, that Rose "only testified about him innocuously charting that a patient was sent to x-ray", and therefore that the PIP seemed "more harassing than purposeful." See Decision, page 13, FN19.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 66: Greenbrier excepts to the Judge's finding that the Hospital's failure to inform Blankinship that the PIP was over "deeply undercut its claim that it had a rehabilitative purpose". See Decision, page 13, FN20.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 67: The Hospital excepts to the Judge's finding that if the PIP were "genuinely" a non-discriminatory tutorial designed to enhance

performance, Rose would have been more directly involved in Blankinship's training.

<u>Grounds</u>: The Judge's finding is not supported by the record and constitutes unlawful speculation.

Exception No. 68: The Hospital excepts to the Judge's finding that Rose's "failure" to take a more active role in a PIP that "involved important patient care issues rendered this undertaking suspect." See Decision, page 13, FN21.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 69: Greenbrier excepts to the Judge's finding that the decision to implement a PIP was "suspect, given [Blankinship's] considerable health care resume and strong past performance." See Decision, page 13, lines 22-23.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 70: Greenbrier excepts to the Judge's finding that Blankinship "received glowing appraisals." See Decision, page 13, FN22.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 71: Greenbrier excepts to the Judge's finding that it was "very unlikely" that Blankinship "suddenly forgot all that he previously knew and transformed into an incompetent, who now required a PIP, in order to regain even a basic level of competency." See Decision, page 13, FN22.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 72: Greenbrier excepts to the Judge's finding that Blankinship was disciplined more drastically than other ER RNs who "committed vastly more serious transgressions." See Decision, page 14, lines 1-2.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 73: Greenbrier excepts to the Judge's finding that other RNs, "unlike Blankinship" had "potentially endangered patients" and "exhibited willful disregard for workplace rules" received written warnings without implementation of a PIP. See Decision, page 14, FN23.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 74: Greenbrier excepts to the Judge's finding that Blankinship's discipline was "far more draconian" than the discipline issued to other ER RNs, and therefore, "suspect". See Decision, page 14, FN23.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 75: Greenbrier excepts to the Judge's finding that the "above-described factors" demonstrate that the Hospital would not have disciplined Blankinship absent his Union activity. See Decision, page 14, lines 2-3.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 76: Greenbrier excepts to the Judge's finding that Blankinship's discharge of a patient with low blood pressure was an "isolated incident" and did not warrant the PIP and warning. See Decision, page 14, FN24.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 77: Greenbrier excepts to the Judge's finding that Blankinship was operating under orders to discharge the patient with low blood pressure. See Decision, page 14, FN24.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 78: Greenbrier excepts to the Judge's finding that Blankinship credibly explained that a blood pressure drop was consistent with the medication that the patient was taking. See Decision, page 14, FN24.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

2. SCHEDULE CHANGE

Exception No. 79: Greenbrier excepts to the Judge's finding that the Hospital did not show that it would have changed Blankinship's schedule absent his Union activity. See Decision, page 14, lines 7-8.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 80: Greenbrier excepts to the Judge's finding that the "same reasons that rendered the PIP and warning unlawful tarnished the schedule change." See Decision, page 14, lines 8-9.

<u>Grounds</u>: The Judge's finding is not supported by the record, mischaracterizes the evidence, and is legally erroneous.

Exception No. 81: Greenbrier excepts to the Judge's finding that if Blankinship were "genuinely unqualified" to work the 7:00 am shift, Rose

would not have regularly assigned Blankinship to the shift for a 3-month period. See Decision, page 14, lines 9-11.

Grounds: The Judge's finding is not supported by the record, mischaracterizes the evidence, is legally erroneous, and constitutes unlawful speculation.

Exception No. 82: Greenbrier excepts to the Judge's finding that Rose assigned Blankinship to the 7:00 am shift as an inducement to remain with the ER. See Decision, page 14, line 10.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 83: Greenbrier excepts to the Judge's finding that Rose's claim that Blankinship was only temporarily assigned the 7:00 am shift in order to replace an RN on leave was not supported by the schedule. See Decision, page 14, lines 11-13.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 84: Greenbrier excepts to the Judge's finding that the schedule change closely followed Blankinship's Union activity. See Decision, page 14, line 13.

Grounds: The Judge's finding is not supported by the record.

D. CONCLUSION

Exception No. 85: Greenbrier excepts to the Judge's finding that the General Counsel fully proved the Complaint allegations. See Decision, page 14, FN25.

Grounds: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 86: Greenbrier excepts to the Judge's finding that the General Counsel had "convincingly shown" that Union animus motivated Blankinship's written warning, PIP and schedule change. See Decision, page 14, lines 17-18.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 87: Greenbrier excepts to the Judge's finding that the precedent set by Alan Ritchie should be "used as guidance for future disciplinary matters" until the parties finalize a collective bargaining agreement. See Decision, page 14, FN26.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 88: Greenbrier excepts to the Judge's finding that the Hospital failed to show it would have taken the actions it did against

Blankinship in the absence of his protected activity. See Decision, pages 14-15, lines 18, 1.

<u>Grounds</u>: The Judge's finding is not supported by the record and is legally erroneous.

Exception No. 89: Greenbrier excepts to the Judge's finding that Thomas Flis' testimony was contradicted by the Hospital's willingness to "regularly assign" Blankinship the 7:00 am shift for a three-month period before his Union activity and by Blankinship's strong prior performance appraisals.

See Decision, page 15, FN27.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 90: Greenbrier excepts to the Judge's finding that Rae Smith's testimony was not credited because "if fully credited, her testimony suggested that the Hospital tolerated a borderline malpractice scenario." See Decision, page 15, FN27.

<u>Grounds</u>: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 91: Greenbrier excepts to the Judge's finding that Rae Smith's testimony was not credited because her testimony was contradicted

by her willingness, as the scheduler, to "regularly" assign Blankinship to the 7:00 am shift for a 3-month period. See Decision, page 15, FN27.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

Exception No. 92: Greenbrier excepts to the Judge's finding that Rae Smith's testimony was not credited because she exaggerated that Blankinship's nursing care reached malpractice proportions.

Grounds: The Judge's finding is not supported by the record and mischaracterizes the evidence.

CONCLUSIONS OF LAW

Exception No. 93: Greenbrier excepts to Conclusions (3) and (4) as set forth by the Conclusions of Law section included in the Judge's Decision. See Decision, page 15, lines 10-15.

Grounds: The Judge's Conclusions of Law are not supported by the record and are legally erroneous.

REMEDY

Exception No. 94: Greenbrier excepts to each and every remedy awarded by the Judge. See Decision, pages 15-16, lines 19-24; FN28; lines 1-4.

<u>Grounds</u>: Each and every remedy lacks any support in the record and is legally erroneous.

ORDER

Exception No. 95: Greenbrier excepts to each and every provision of the

Order set forth by the Judge's Decision. See Decision, pages 16-17, lines

11-40; lines 1-9.

Grounds: Each and every provision of the Order lacks any support in the

record and is legally erroneous.

APPENDIX

Exception No. 96: Greenbrier excepts to the entirety of the Appendix

attached to the Judge's Decision. See Appendix, pages 1-2.

The Appendix lacks any support in the record and is legally Grounds:

erroneous.

Dated: March 3, 2014

West Hartford, Connecticut

Respectfully submitted,

Kaita Brudage

Kaitlin Brundage

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

GREENBRIER VMC, LLC D/B/A

Case No. 10-CA-094646

GREENBRIER VALLEY MEDICAL

CENTER

:

and

:

NATIONAL NURSES ORGANIZING

COMMITTEE

CERTIFICATE OF SERVICE

The Undersigned, Kaitlin Brundage, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. §1746, that the Respondent's Exceptions to the Decision issued by Administrative Law Judge Robert Ringler was served on March 3, 2014 upon the following:

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Dated: West Hartford, Connecticut

March 3, 2014

Respectfully submitted,

Kaitlin Brundage

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